

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SENATE BILL 1276

AN ACT

AMENDING SECTIONS 4-101, 4-203.04 AND 4-205.04, ARIZONA REVISED STATUTES;
RELATING TO LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-101, Arizona Revised Statutes, is amended to
3 read:

4 4-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act of violence" means an incident consisting of a riot, a brawl
7 or a disturbance, in which bodily injuries are sustained by any person and
8 such injuries would be obvious to a reasonable person, or tumultuous conduct
9 of sufficient intensity as to require the intervention of a peace officer to
10 restore normal order, or an incident in which a weapon is brandished,
11 displayed or used. Act of violence does not include the use of nonlethal
12 devices by a peace officer.

13 2. "Aggrieved party" means a person who resides at, owns or leases
14 property within a one mile radius of a premises proposed to be licensed and
15 who filed a written request with the department to speak in favor of or
16 opposition to the issuance of the license no later than sixty days after the
17 filing of the application or fifteen days after action by the local governing
18 body, whichever is later.

19 3. "Beer" means any beverage obtained by the alcoholic fermentation,
20 infusion or decoction of barley malt, hops, or other ingredients not
21 drinkable, or any combination of them.

22 4. "Board" means the state liquor board.

23 5. "Bona fide guest" means:

24 (a) A person who is actually a houseguest or a person whose presence
25 as a guest is in response to a specific and personal invitation.

26 (b) In the case of a club that meets the criteria prescribed in
27 paragraph 7, subdivision (a) of this section, a current member of the armed
28 services of the United States who presents proper military identification and
29 any member of a recognized veterans' organization of any country allied with
30 the United States during current or past wars or through treaty arrangements.

31 6. "Broken package" means any container of spirituous liquor on which
32 the United States tax seal has been broken or removed, or from which the cap,
33 cork or seal placed thereupon by the manufacturer has been removed.

34 7. "Club" includes any of the following organizations where the sale
35 of spirituous liquor for consumption on the premises is made to members only:

36 (a) A post, chapter, camp or other local unit composed solely of
37 veterans and its duly recognized auxiliary which has been chartered by the
38 Congress of the United States for patriotic, fraternal or benevolent purposes
39 and which has, as the owner, lessee or occupant, operated an establishment
40 for that purpose in this state.

41 (b) A chapter, aerie, parlor, lodge or other local unit of an American
42 national fraternal organization which has as the owner, lessee or occupant
43 operated an establishment for fraternal purposes in this state. An American
44 national fraternal organization as used in this subdivision shall actively

1 operate in not less than thirty-six states or have been in active continuous
2 existence for not less than twenty years.

3 (c) A hall or building association of a local unit mentioned in
4 subdivisions (a) and (b) of this paragraph, all of the capital stock of which
5 is owned by the local unit or the members, and which operates the clubroom
6 facilities of the local unit.

7 (d) A golf club which has more than fifty bona fide members and which
8 owns, maintains or operates a bona fide golf links together with a clubhouse.

9 (e) A social club with more than one hundred bona fide members who are
10 actual residents of the county in which it is located, that owns, maintains
11 or operates club quarters, is authorized and incorporated to operate as a
12 nonprofit club under the laws of this state, and has been continuously
13 incorporated and operating for a period of not less than one year. The club
14 shall have had, during this one year period, a bona fide membership with
15 regular meetings conducted at least once each month, and the membership shall
16 be and shall have been actively engaged in carrying out the objects of the
17 club. The club's membership shall consist of bona fide dues paying members
18 paying at least six dollars per year, payable monthly, quarterly or annually,
19 which have been recorded by the secretary of the club, and the members at the
20 time of application for a club license shall be in good standing having for
21 at least one full year paid dues. At least fifty-one per cent of the members
22 shall have signified their intention to secure a social club license by
23 personally signing a petition, on a form prescribed by the board, which shall
24 also include the correct mailing address of each signer. The petition shall
25 not have been signed by a member at a date earlier than thirty days prior to
26 the filing of the petition. The club shall qualify for exemption from the
27 payment of state income taxes under title 43. It is the intent of this
28 paragraph that a license shall not be granted to a club which is, or has
29 been, primarily formed or activated to obtain a license to sell liquor, but
30 solely to a bona fide club, where the sale of liquor is incidental to the
31 main purposes of the club.

32 (f) An airline club operated by or for airlines which are certificated
33 by the United States government and which maintain or operate club quarters
34 located at airports with international status.

35 8. "Company" or "association", when used in reference to a
36 corporation, includes successors or assigns.

37 9. "Control" means the power to direct or cause the direction of the
38 management and policies of an applicant, licensee or controlling person,
39 whether through the ownership of voting securities or a partnership interest,
40 by agreement or otherwise. Control is presumed to exist if a person has the
41 direct or indirect ownership of or power to vote ten per cent or more of the
42 outstanding voting securities of the applicant, licensee or controlling
43 person or to control in any manner the election of one or more of the
44 directors of the applicant, licensee or controlling person. In the case of a
45 partnership, control is presumed to mean the general partner or a limited

1 partner who holds ten per cent or more of the voting rights of the
2 partnership. For the purposes of determining the percentage of voting
3 securities owned, controlled or held by a person, there shall be aggregated
4 with the voting securities attributed to the person the voting securities of
5 any other person directly or indirectly controlling, controlled by or under
6 common control with the other person, or by an officer, partner, employee or
7 agent of the person or by a spouse, parent or child of the person. Control
8 is also presumed to exist if a creditor of the applicant, licensee or
9 controlling person holds a beneficial interest in ten per cent or more of the
10 liabilities of the licensee or controlling person.

11 10. "Controlling person" means a person directly or indirectly
12 possessing control of an applicant or licensee.

13 11. "Department" means the department of liquor licenses and control.

14 12. "Director" means the director of the department of liquor licenses
15 and control.

16 13. "Distilled spirits" includes alcohol, brandy, whiskey, rum,
17 tequila, mescal, gin, absinthe, a compound or mixture of any of them or of
18 any of them with any vegetable or other substance, alcohol bitters, bitters
19 containing alcohol, fruits preserved in ardent spirits, and any alcoholic
20 mixture or preparation, whether patented or otherwise, which may in
21 sufficient quantities produce intoxication.

22 14. "DOMESTIC FARM WINERY" MEANS A WINERY IN THE UNITED STATES OR IN A
23 TERRITORY OR POSSESSION OF THE UNITED STATES THAT MEETS THE REQUIREMENTS OF
24 SECTION 4-205.04.

25 ~~14.~~ 15. "Employee" means any person who performs any service on
26 licensed premises on a full-time, part-time or contract basis with consent of
27 the licensee, whether or not the person is denominated an employee,
28 independent contractor or otherwise. Employee does not include a person
29 exclusively on the premises for musical or vocal performances, for repair or
30 maintenance of the premises or for the delivery of goods to the licensee.

31 ~~15.~~ 16. "Government license" means a license to serve and sell
32 spirituous liquor on specified premises available only to a county, city,
33 town or state university or the Arizona coliseum and exposition center upon
34 application by the governing body of a county, city, town or state university
35 or the Arizona exposition and state fair board.

36 ~~16.~~ 17. "Legal drinking age" means the age of twenty-one years or
37 older.

38 ~~17.~~ 18. "License" means a license or an interim retail permit issued
39 pursuant to the provisions of this title.

40 ~~18.~~ 19. "License fees" means fees collected for license issuance,
41 license application, license renewal, interim permit issuance and license
42 transfer between persons or locations.

43 ~~19.~~ 20. "Licensee" means a person who has been issued a license or an
44 interim retail permit pursuant to the provisions of this title or a special
45 event licensee.

~~20-~~ 21. "Manager" means a natural person who meets the standards required of licensees and has authority to organize, direct, carry on, control or otherwise operate a licensed business on a temporary or full-time basis.

~~21-~~ 22. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling spirituous liquors, wines and beer, and any established retail store selling commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

~~22-~~ 23. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

~~23-~~ 24. "Person" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.

~~24-~~ 25. "Premises" or "licensed premises" means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license.

~~25-~~ 26. "Registered mail" includes certified mail.

~~26-~~ 27. "Registered retail agent" means any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of himself and other retail licensees.

~~27-~~ 28. "Repeated acts of violence" means two or more acts of violence occurring within seven days, three or more acts of violence occurring within thirty days or acts of violence occurring with any other similar frequency which the director determines to be unusual or deserving of review.

~~28-~~ 29. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell and trafficking in.

~~29-~~ 30. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.

~~30-~~ 31. "Vehicle" means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

~~31-~~ 32. "Vending machine" means a machine that dispenses merchandise through the means of coin, token, credit card or other nonpersonal means of accepting payment for merchandise received.

~~32-~~ 33. "Veteran" means a person who has served in the United States air force, army, navy, marine corps or coast guard, as an active nurse in the services of the American red cross, in the army and navy nurse corps in time

1 of war, or in any expedition of the armed forces of the United States, and
2 who has received a discharge other than dishonorable.

3 ~~33-~~ 34. "Voting security" means any security presently entitling the
4 owner or holder of the security to vote for the election of directors of an
5 applicant, licensee or controlling person.

6 ~~34-~~ 35. "Wine" means the product obtained by the fermentation of grapes
7 or other agricultural products containing natural or added sugar or any such
8 alcoholic beverage fortified with grape brandy and containing not more than
9 twenty-four per cent of alcohol by volume."

10 Sec. 2. Section 4-203.04, Arizona Revised Statutes, is amended to
11 read:

12 4-203.04. Direct shipment license; issuance; fee; requirements;
13 penalties; cease and desist orders; definitions

14 A. The director may issue a direct shipment license to a person who is
15 engaged in business as a distiller, vintner, brewer, rectifier, blender or
16 other producer of spirituous liquor if the person is licensed in the state
17 where the person's principal place of business is located and the director
18 determines that the person is capable and reliable and is qualified to hold a
19 direct shipment license.

20 B. A person shall apply for a direct shipment license on a form
21 prescribed by the director. The director may charge an application fee. In
22 addition to other matters required by the director, an application for a
23 direct shipment license shall include:

24 1. The address of the premises where the applicant's principal place
25 of business is located and a copy of the applicant's spirituous liquor
26 license in that state.

27 2. The name, address and telephone number of an officer of the
28 applicant who is authorized to represent the applicant before the director.

29 3. A complete and full disclosure by the applicant and by any officer,
30 director, administrator or controlling person of the applicant of any
31 criminal convictions in any state or foreign jurisdiction within the five
32 years immediately preceding the application.

33 4. The names and addresses of the wholesalers licensed in this state
34 through which the applicant will ship spirituous liquor into or within this
35 state.

36 5. The number of individual orders of spirituous liquor, if any, that
37 the applicant shipped to wholesalers in this state during the previous three
38 years and the names and addresses of each wholesaler who received the
39 shipments.

40 6. A statement that the applicant acknowledges that shipments by the
41 applicant of spirituous liquor into or within this state contrary to this
42 section will result in the immediate suspension of the applicant's direct
43 shipment license.

44 C. The director may refuse to issue a direct shipment license for good
45 cause. After a hearing, the director may suspend or revoke a direct shipment

1 license for good cause. The director shall not issue a direct shipment
2 license to any person who:

3 1. Has had a direct shipment license or any license to deal in
4 spirituous liquor revoked in this state or any other state within one year
5 preceding the application.

6 2. Has been convicted of a felony in this state or any other state or
7 has been convicted of an offense in another state that would be a felony if
8 convicted in this state within five years preceding the application.

9 D. A direct shipment license is valid for three years. Direct
10 shipment licenses may not be renewed or transferred. A person who holds a
11 direct shipment license may apply for a new license not more than ninety days
12 before expiration of the person's current license.

13 E. A resident of this state who is twenty-one years of age or older
14 may place an order in person, by telephone, mail or catalog or on the
15 internet for spirituous liquor for the person's own personal use with a
16 person who holds a direct shipment license.

17 F. A person who holds a direct shipment license shall ensure that
18 shipments of spirituous liquor pursuant to this section are made in
19 conformance with all applicable provisions of this title and rules adopted
20 pursuant to this title. A direct shipment licensee who violates this title
21 or rules adopted pursuant to this title is subject to a civil or criminal
22 penalty and suspension or revocation of the person's license.

23 G. A person who holds a direct shipment license shall deliver
24 spirituous liquor ordered pursuant to subsection E of this section to a
25 wholesaler who is licensed in this state. The wholesaler shall pay all
26 luxury taxes imposed on the shipment pursuant to title 42, chapter 3 to the
27 department of revenue and shall deliver the liquor to a retailer with
28 off-sale privileges who is licensed in this state.

29 H. The licensed retailer shall deliver the spirituous liquor or shall
30 arrange for the delivery of the spirituous liquor to the person who placed
31 the order and shall collect and pay to the department of revenue all
32 transaction privilege taxes imposed pursuant to title 42, chapter 5. The
33 retailer shall:

34 1. Ensure that:

35 (a) The person making the delivery is twenty-one years of age or
36 older.

37 (b) The delivery occurs only during the hours that spirituous liquor
38 may be lawfully served in this state.

39 (c) Deliveries are not made to persons who are obviously intoxicated
40 or are otherwise disorderly.

41 (d) The person accepting the delivery is twenty-one years of age or
42 older and exhibits an acceptable written instrument of identification
43 pursuant to section 4-241.

44 2. Make a record of the delivery at the time of delivery on a form
45 approved by the director of the department of liquor licenses and control.

1 The record shall be retained by the retailer for at least two years and shall
2 include the following information:

- 3 (a) The business name, address and license number of the retailer.
- 4 (b) The date and time of delivery.
- 5 (c) The address where the delivery occurred.
- 6 (d) The type, brand and amount of the spirituous liquor delivered.
- 7 (e) The printed name and signature of the person making the delivery.
- 8 (f) The printed name and signature of the person accepting the
9 delivery, along with the type and serial number of the written identification
10 the person accepting delivery presented.
- 11 (g) The age of the person accepting delivery.

12 3. Refuse to complete a delivery if the retailer believes that the
13 delivery would violate any applicable provision of this title.

14 I. If the director has reasonable cause to believe that a person who
15 is licensed pursuant to this section is acting in violation of this section,
16 the director may serve a cease and desist order requiring the person to cease
17 and desist the violation. The director may impose a civil penalty of not
18 more than one hundred fifty thousand dollars against a person who knowingly
19 violates a cease and desist order issued pursuant to this section.

20 J. ~~This section shall not be construed to prohibit~~ NOTWITHSTANDING ANY
21 OTHER LAW, a person ~~from shipping~~ MAY SHIP wine as long as all of the
22 following apply:

23 1. The wine was purchased while the purchaser was physically present
24 at the winery.

25 2. The purchaser of the wine provided the winery verification of legal
26 age to purchase alcohol.

27 3. The shipping container in which the wine is shipped is marked to
28 require ~~an adult's~~ THE signature on delivery OF AN ADULT WHO IS OF LEGAL AGE
29 TO PURCHASE ALCOHOL and delivery confirmation.

30 4. The wine is for personal use only and not for resale.

31 5. The winery ships to a residential OR BUSINESS address.

32 6. The purchaser could have carried the wine lawfully into or within
33 this state.

34 ~~7. The winery ships not more than two cases of wine per winery to the~~
35 ~~purchaser in any calendar year.~~

36 K. NOTWITHSTANDING ANY OTHER LAW, A PERSON MAY SHIP WINE THAT IS
37 ORDERED BY TELEPHONE, MAIL, FAX OR CATALOG OR THROUGH THE INTERNET IF ALL OF
38 THE FOLLOWING APPLY:

39 1. THE WINE IS PURCHASED FROM A LIMITED PRODUCTION WINERY.

40 2. THE PURCHASER OF THE WINE PROVIDED THE WINERY VERIFICATION OF LEGAL
41 AGE TO PURCHASE ALCOHOL.

42 3. THE SHIPPING CONTAINER IN WHICH THE WINE IS SHIPPED IS MARKED TO
43 REQUIRE THE SIGNATURE ON DELIVERY OF AN ADULT WHO IS OF LEGAL AGE TO PURCHASE
44 ALCOHOL AND DELIVERY CONFIRMATION.

45 4. THE WINE IS FOR PERSONAL USE ONLY AND NOT FOR RESALE.

1 5. THE WINE IS SHIPPED TO A RESIDENTIAL OR BUSINESS ADDRESS.

2 6. THE PURCHASER COULD HAVE CARRIED THE WINE LAWFULLY INTO OR WITHIN
3 THIS STATE.

4 ~~K-~~ L. Section 4-201 does not apply to licenses issued pursuant to
5 this section.

6 M. FOR THE PURPOSES OF THIS SECTION, "LIMITED PRODUCTION WINERY" MEANS
7 A WINERY THAT PRODUCES FEWER THAN FIFTY THOUSAND GALLONS OF WINE IN A TWELVE
8 MONTH PERIOD AND IS LICENSED AS A DOMESTIC FARM WINERY PURSUANT TO SECTION
9 4-205.04.

10 Sec. 3. Section 4-205.04, Arizona Revised Statutes, is amended to
11 read:

12 4-205.04. Domestic farm winery or domestic microbrewery
13 license; issuance; regulatory provisions; retail
14 site

15 A. The director may issue a domestic farm winery or domestic
16 microbrewery license to any domestic farm winery or domestic
17 microbrewery. Each location which engages in producing and bottling these
18 products must obtain a separate domestic farm winery or domestic microbrewery
19 license, but both such licenses may be issued for a common location. The
20 licensee may not transfer the domestic farm winery or domestic microbrewery
21 license from person to person or from location to location.

22 B. An applicant for a domestic farm winery or domestic microbrewery
23 license shall, at the time of filing the application for the license,
24 accompany the application with the license fee. Persons holding a domestic
25 farm winery or domestic microbrewery license shall report annually at the end
26 of each fiscal year, at such time and in such manner as the director may
27 prescribe, the amount of wine or beer manufactured by them during the fiscal
28 year. If the total amount of wine or beer manufactured during the year
29 exceeds the amount permitted annually by the license, the licensee shall
30 apply for and receive an in-state producer's license.

31 C. Notwithstanding any other statute, a licensed domestic farm winery
32 may sell wine produced or manufactured on the premises in the original
33 container for consumption on or off the premises and may make sales and
34 deliveries of wine to persons licensed to sell wine under this title. A
35 licensed domestic farm winery may serve wine produced or manufactured on the
36 premises for the purpose of sampling the wine.

37 D. A licensed domestic farm winery is subject to ~~all~~ BOTH of the
38 following requirements:

39 1. The winery shall produce not less than two hundred gallons and not
40 more than ~~seventy-five~~ FIFTY thousand gallons of wine annually from grapes or
41 other suitable agricultural products ~~of which at least seventy-five per cent~~
42 ~~are grown in this state. The director may allow a percentage of out-of-state~~
43 ~~agricultural products greater than twenty-five per cent in wine manufactured~~
44 ~~or produced by a licensed domestic farm winery if the licensed domestic farm~~
45 ~~winery can demonstrate to the satisfaction of the director that sufficient~~

~~in-state agricultural products are not available because of an unexpected failure of suitable in-state crops due to natural causes. The exemption shall remain in effect only for the period of time during which such shortages actually exist.~~

2. The winery may purchase and sell wine produced from a domestic farm winery if the retail sale of the wine is conducted from the same site as the location of the winery.

E. Notwithstanding any other statute, a licensed domestic microbrewery may sell beer produced or manufactured on the premises for consumption on or off the premises and may make sales and deliveries of beer to persons licensed to sell beer under this title, including wholesalers licensed under this title. A licensed domestic microbrewery may serve beer produced or manufactured on the premises for the purpose of sampling the beer. A licensed domestic microbrewery is subject to all of the following requirements:

1. The microbrewery shall produce not less than ten thousand gallons of beer in each year following the first year of operation.

2. The microbrewery shall not produce more than three hundred ten thousand gallons of beer annually.

3. If retail operations are conducted in conjunction with the microbrewery, these retail operations shall be conducted from the same site as the location of the microbrewery.

4. The microbrewery may sell other spirituous liquor products if:

(a) The microbrewery holds an on-sale retail license.

(b) The retail sale of the spirituous liquor is on or adjacent to the premises of the microbrewery.

F. A person who holds a domestic microbrewery license that meets the requirements of this section and who is not otherwise engaged in the business of a distiller, vintner, brewer, rectifier, blender or other producer of spirituous liquor in any jurisdiction may hold other on-sale retail licenses. The person shall purchase all spirituous liquor for sale at the other on-sale retail premises from wholesalers who are licensed in this state.

G. The director shall adopt rules in order to administer this section.